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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 ALEX BERRERA,

12 Petitioner,

13 v.

14 CDCR BOARD OF PRISON HEARINGS,
15 et al.,

16 Respondents.
17

No. 2:21-CV-1648-JAM-DMC-P

FINDINGS AND RECOMMENDATIONS

18 Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of
19 habeas corpus under 28 U.S.C. § 2254. On September 22, 2021, the Court directed Petitioner to
20 submit either a completed application for leave to proceed in forma pauperis or the full filing fee
21 for this action within 30 days. Petitioner was warned that failure to comply may result in
22 dismissal of this action for lack of prosecution and failure to comply with court rules and orders.
23 See Local Rule 110. To date, Petitioner has failed to comply.

24 The Court must weigh five factors before imposing the harsh sanction of
25 dismissal. See Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000); Malone v.
26 U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's
27 interest in expeditious resolution of litigation; (2) the court's need to manage its own docket; (3)
28 the risk of prejudice to opposing parties; (4) the public policy favoring disposition of cases on

1 their merits; and (5) the availability of less drastic sanctions. See id.; see also Ghazali v. Moran,
2 46 F.3d 52, 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an
3 appropriate sanction is considered a less drastic alternative sufficient to satisfy the last factor. See
4 Malone, 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution is
5 appropriate where there has been unreasonable delay. See Henderson v. Duncan, 779 F.2d 1421,
6 1423 (9th Cir. 1986). Dismissal has also been held to be an appropriate sanction for failure to
7 comply with an order to file an amended complaint. See Ferdik v. Bonzelet, 963 F.2d 1258,
8 1260-61 (9th Cir. 1992).

9 Having considered these factors, and in light of Petitioner's failure to resolve the
10 fee status for this case as directed, the Court finds that dismissal of this action is appropriate.

11 Based on the foregoing, the undersigned recommends that this action be
12 dismissed, without prejudice, for lack of prosecution and failure to comply with court rules and
13 orders.

14 These findings and recommendations are submitted to the United States District
15 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
16 after being served with these findings and recommendations, any party may file written
17 objections with the court. Responses to objections shall be filed within 14 days after service of
18 objections. Failure to file objections within the specified time may waive the right to appeal. See
19 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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21 Dated: November 16, 2021



22 DENNIS M. COTA
23 UNITED STATES MAGISTRATE JUDGE
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